



November 13, 2001

VIA ELECTRONIC FILING

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW- TW - A235
Washington, DC 20554

**Re: In the Matter of Joint Application by BellSouth Corporation,
BellSouth Telecommunications, Inc., and BellSouth Long Distance,
Inc. for Provision of In-Region, InterLATA Services in Georgia and
Louisiana; CC Docket No. 01-277.**

Dear Ms. Salas:

Attached are the Associations for Local Telecommunications Services' (ALTS) Reply Comments in response to the Commission's *Public Notice*, dated October 2, 2001, in the above captioned proceeding.

Sincerely,

/s/

Kimberly M. Kirby
Association for Local
Telecommunications Services



November 13, 2001

VIA ELECTRONIC FILING

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: In the Matter of Joint Application by BellSouth Corporation,
BellSouth Telecommunications, Inc., and BellSouth Long Distance,
Inc. for Provision of In-Region, InterLATA Services in Georgia and
Louisiana; CC Docket No. 01-277.**

Dear Ms. Attwood:

Please accept this letter as the Association For Local Telecommunications Services' (ALTS) Reply Comments in the above-captioned proceeding.

The Commission should deny the Joint Application outright and reinstate the standard that has been abandoned in previous BOC applications. Most notably, the Commission has allowed the "irreversibly open to competition" standard to slip to the less stringent "promises of future compliance," or, "credit given for good deeds done in other states."

ALTS, and other CLECs, have stated countless times in section 271 filings that BOCs have the burden of proving checklist compliance *contemporaneous with* the filing. That does not mean file today and comply tomorrow, or file today and use past approvals as the basis for meeting the burden of proof. Rather, the BOC must show full compliance with each individual item in section 271 of the Telecommunications Act at the time of filing. Unacceptable filings include: promises of future compliance; credit for approved applications in neighboring states; and incomplete data on critical items.¹ Yet the

¹ See Evaluation of the Department of Justice, *In the Matter of: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, FCC Docket No. 01-277 (November, 6 2001) at 3 (DOJ Eval): "The Louisiana PSC determined that it could address areas where BellSouth's performance fell below the stated benchmark through future proceedings. Both the Louisiana and Georgia Commissions also ordered BellSouth to implement a number of OSS upgrades within the next several months."

Commission continues to approve faulty applications and gut the section 271 compliance threshold.

In its Reply Comments in CC Docket No. 01-194 (SBC's application for long distance authority in Missouri and Arkansas), ALTS urged the Commission to retreat from its recent standard of "fix and re-file," or "approve upon future promises" and instead stand firm on the benchmark of "irreversibly open to competition." This standard is critical not only as a means to set the correct incentives for BOCs to deal fairly in the competitive environment, but also to ensure that CLECs and the Commission are not forced to respond to time-consuming and resource-intensive premature applications. This is critical especially where it is evident that the Enforcement Bureau continues to play a de minimis role in the competitive arena.

ALTS believes that the same enforcement issues, or lack thereof, that plagued the SBC Missouri and Arkansas application are present in this proceeding as well. Although the goal of the Enforcement Bureau was "...enforcement of the Communications Act, as well as Commission rules, orders and authorizations,"² CLECs continue to struggle with the BOCs on competitive issues with no relief from the FCC's enforcement arm. Far too few complaints have resulted in enforcement action by the FCC. Moreover, the FCC appears to take little or no action on its own but rather insists on CLECs filing claims against BOC acts of misfeasance even where there is clear evidence of BOCs violating Commission orders, local competition rules, and/or merger conditions.

There has been no resolution on several critical competitive issues.³ When issues are brought to the attention of the FCC, the typical response is that the existing rules do not create a cognizable claim and that the CLEC should return to the Common Carrier Bureau in order to seek clarification of the rules. All the while competitors continue to tumble helplessly into the Commission's administrative Catch 22, with rules that do not allow parties to set forth a cognizable claim and an inability to obtain new rules, or necessary clarification of existing rules, which would allow the carrier to compete effectively with the ILECs. To the extent the Commission has penalized the ILECs, those penalties have been mere monetary slaps on the wrist even though the Commission has the authority to impose more stringent enforcement measures.

Section 271(d)(6)(A)(iii) allows the Commission to issue a "stand-still" order, which would prohibit the BOC from enrolling additional subscribers for its long distance service and from marketing and promoting its long distance service. The Commission also may revoke the BOC's authority to provide long distance service altogether. However the Commission has never taken advantage of all the tools available to ensure

² See FCC News Release issued October 26, 1999.

³ Over numerous objections, the FCC has not resolved the critical debate over access to EELs (Enhanced Extended Loops) that would enable a CLEC not collocated at a central office to have access to the loop and transport component at cost-based rates. In the meantime, ILECs continue to game the process by "misinterpreting" Commission orders and forcing CLECs to take alternative, non-cost effective routes. The CLECs filed in the Verizon-Pennsylvania section 271 case that Verizon refuses to convert circuits using "no facilities" available" as an excuse to force CLECs to purchase out of the special access tariffs

BOC compliance even though there has been evidence in several instances that would merit such tactics.

ALTS urges the Commission to take full advantage of its authority granted under the law and seek to impose those measures that would more likely lead to BOC compliance. Otherwise the BOC would surely choose a small monetary penalty over strict compliance with the law, as highlighted in the Affidavit of Brent McMahan of Network Telephone Corporation attached as Exhibit A.⁴ In the affidavit, Mr. McMahan describes a meeting in which BellSouth representatives clearly stated the company's intention not to improve its OSS processes but rather to continue paying penalties for its noncompliance.⁵ This is strong evidence that BellSouth considers these penalties merely a cost of doing business rather than a deterrent that would lead the company to improve its wholesale business processes. Moreover, as indicated by Mr. McMahan, CLECs do not consider the small penalty payments they receive to be compensatory for the delays and roadblocks they face when dealing with their BOC wholesale vendors.⁶ CLECs would much prefer that the BOCs comply with the Telecommunications Act and provide adequate wholesale services so that the CLECs can maintain positive relationships with their own retail customers. ALTS believes that if there were a real and meaningful threat of halting BOC long distance business operations, the CLECs might see more movement in the direction of effective competition.

BellSouth On The Bandwagon

BellSouth, like its fellow BOCs, has chosen to file a Joint application seeking long distance authority in two states, Georgia and Louisiana. Given that the Commission has made it easier for BOCs to file section 271 applications on a "two-for-one" basis, it is not surprising that BellSouth has filed one application to cover two states. After all, the Commission approved SBC's Kansas and Oklahoma application and SBC's Missouri and Arkansas application is pending. Rather than prove compliance on a credible state-by-state basis, BellSouth chooses instead to seek authority in Georgia and take Louisiana along for the ride. Unfortunately, the Commission has given the green light for such filings, and the CLECs are left with the frustrating task of fighting two separate filings at the same time.

BellSouth is trying to appear reasonable and helpful by filing the two states together, but in reality BellSouth is capitalizing on a recent change in procedure initiated by SBC and blessed by the Commission. The double filing is helpful only to BellSouth. Perhaps BellSouth's reasoning would have been less transparent had Georgia and Louisiana held joint state proceedings using the same data and witnesses in addition to a credible, and truly independent, third party OSS test and evaluation. Yet it is clear from the commenters in this proceeding, including the U.S. Department of Justice, that BellSouth is merely trying to sneak past the Commission's scrutiny using prior BOC

⁴ See Exhibit A, Affidavit of Brent E. McMahan, Network Telephone Corporation.

⁵ *Id.*

⁶ *Id.* at 2.

applications as the foundation for the dual application.⁷ It is ALTS' hope that the Commission will look past this tactic and make its decision based on the individual state criteria.⁸

BellSouth's OSS Data is Flawed

On November 8, 2001, ALTS staff and member company Network Telephone Corporation ("NTC") met with the Common Carrier Bureau to discuss various issues regarding BellSouth's poor performance as a wholesale provider of services and questions regarding the integrity of BellSouth's provided OSS data. At that meeting, NTC provided various spreadsheets of data compiled from BellSouth's databases, highlighting discrepancies between various databases and reports. Because of these discrepancies, ALTS believes the Commission should not rely on BellSouth's data or conclusions drawn from that data. Below is a more detailed summary of the ex parte discussion with the Common Carrier Bureau.

The data on the spreadsheet attached as Exhibit B shows that there are apparent gaps in BellSouth's data flow processes. Each of the PONs listed on the spreadsheet should be included in the FOC, OCI, and TSOCT raw data files, and if the PONs were rejected, they should be collected in the Percent Reject raw data within PMAP. However, as shown by this sampling of orders compiled from those databases, some orders are not being captured by all of BellSouth's raw data files.⁹ Because the sampling of orders selected for this survey were orders completed by BellSouth within the reported month, most of the data on this spreadsheet show timely performance by BellSouth that was presumably excluded from at least some of BellSouth's tracking reports. It is unclear, however, how many or what types of other orders may have fallen out of the system where BellSouth may not have performed properly and would have been subject to additional penalties.

⁷ See DOJ Eval. at 4-6: "Recognizing that commercial experience had not fully demonstrated the operational readiness of BellSouth's OSS, the Georgia PSC also required BellSouth to engage in third-party testing of its OSS as well as performance measures. Although the Georgia KPMG test provides some evidence of the functionality and operability of BellSouth's OSS, the test has significant limitations. First, the Georgia test was limited in scope. Although the Commission ultimately required some additional testing and other improvements, a number of key areas remained outside the parameters of the test. Second, unlike in New York, in Georgia KPMG did not draft the Master Test Plan. Third, a number of Georgia test 'exceptions' appear to have been closed without verification that the problems had been resolved. Finally, KPMG has not completed the metrics testing ordered by the Georgia PSC. The Louisiana PSC relied on the Georgia OSS test where the commercial experience in Louisiana was insufficient."

⁸ It should also be noted that BellSouth has no federal DSL retail tariff, making it impossible for a CLEC to obtain a 251(c)(4) discount.

⁹ In order to review BellSouth's processes, a sampling of orders was selected, and each raw data file (FOC, OCI, TSOCT, and Percent Reject) was queried for that PON. Each data file was color-coded and then all the files were merged and sorted by PON. Exhibit B is a sampling of orders that were found in the FOC raw data file but not in the other files, thus showing that BellSouth's data processes do not accurately capture all of the PONs that are processed. For example, PON 1090829201 was found in the FOC raw data but not in the other raw data files in PMAP as it should have been.

As mandated pursuant to Georgia PSC order, a Flow Through Task Force ("FTTF") was developed to address flow through issues between BellSouth and CLECs. At its meeting on April 24, 2001, the FTTF undertook action items listed on the minutes attached as Exhibit C. The result of some of those action items is contained in Exhibit D, which includes BellSouth's descriptions of certain error codes, labeling them as "Internal system errors" presumably caused by BellSouth, not the CLECs. However, as noted on the Error Analysis Report attached as Exhibit E,¹⁰ BellSouth has attributed a significant percentage of these type errors to CLECs over the past nine months.¹¹ For example, in September, BellSouth attributed to the CLECs 32.63% of 7110 errors, 36.36% of 7115 errors, 51.30% of 7465 errors, 35.50% of 7630 errors, 51.04% of 7645 errors, 40.25% of 7718 errors, and 46.61% of 8820 errors. It is unclear why BellSouth would attribute any of these errors to CLECs when the descriptions of these errors indicate they are internal to BellSouth. The misallocation of these errors to CLECs misrepresents BellSouth's flow through data, especially the CLEC excluded error calculation for which remedy payments are made. In fact, on several of the descriptions BellSouth indicates that the root cause of the error is unknown. The integrity of BellSouth's data and conclusions is certainly questionable if it can so readily assess blame on the CLECs when it cannot yet even discern the cause of the error.

Additionally, it is unclear why the total counts for monthly errors (included at the bottom of the Error Analysis Report compiled in Exhibit E) do not match the total system fallout errors reported in the Flow Through Detailed Aggregate Report attached as Exhibit F, considering that both sets of data were obtained from BellSouth's PMAP databases. For example, on Exhibit E, the total error count for September was 83382, 61866 of which were attributed to CLECs and 21516 of which were attributed to BellSouth; however, on Exhibit F, the total system fallout was 44261, 13144 of which were attributed to CLECs and 31117 of which were attributed to BellSouth. Although Network Telephone and other carriers have inquired about these discrepancies, BellSouth has failed to provide an adequate response to account for them. While it is disturbing that there is a discrepancy of almost 40,000 errors between the September figures alone, what is more disturbing is the disparate allocation of those errors between CLECs and BellSouth in each of the reports. For example, on Exhibit E, BellSouth attributed 74.2% of the errors to CLECs and 25.8% to itself, while on Exhibit F, BellSouth attributed 29.7% of the errors to CLECs and 70.3% to itself. Without further explanation and data from BellSouth, there is no way for CLECs or the Commission to determine which of these reports, if any, is accurate. Given all of the data discrepancies identified by Network Telephone and the inability of CLECs and the Commission to verify BellSouth's data, there is no justification for the Commission to rely on any of BellSouth's data to indicate BellSouth's OSS readiness and compliance with Section 271.

¹⁰ The attached 9 month error detail report is a collective analysis of error data compiled from BellSouth's PMAP website located at <https://pmap.bellsouth.com/>, under the folder of Miscellaneous Reports - Aggregate Reports - [Flow Through 092001.xls](#).

¹¹ See counts for error codes 7115, 7465, 7645, 7718, 8820, 7630, and 7110.

BellSouth's OSS Do Not Satisfy Requirements for Checklist Items (ii) or (iv)

BellSouth does not have the systems in place to offer Enhanced Extended Loops (EELs), nor do BellSouth's performance metrics include xDSL loop orders.¹² Yet BellSouth claims, in its November 5, 2001 Strategy Briefing, that it has taken the lead in broadband deployment witnessing a 170% growth in DSL lines in 2001.¹³ BellSouth claims that it cannot process orders for EELs and does not have adequate commercial data for xDSL-capable loop performance. However, the Commission has stated that BellSouth must include xDSL data in order to satisfy BOS obligations under section 271.¹⁴ A further affront to competition is that BellSouth is targeting DSL customers and data network growth as a key factor to its future business success while CLECs cannot gain adequate access in order to offer advanced services.

Additionally, BellSouth's self-reported data shows that BellSouth's trunk blockage is much less than CLEC trunk blockage. In fact, from May through July 2001, CLECs experienced 698% more blockage on their trunk groups than BellSouth experienced in its local network.¹⁵ In fact, the disparity in blocking between CLEC trunk groups and BellSouth trunk groups is much higher today than when the Commission denied BellSouth's second Louisiana application.

Furthermore, BellSouth's region-wide Change Control Process ("CCP") is inadequate to address CLEC concerns. Attached as Exhibits G and H are BellSouth responses to open exceptions #88 and #106 in the Florida OSS testing where KPMG raised issues concerning whether BellSouth provides adequate opportunity for CLECs to participate in the prioritization process. Although these exceptions are highlighted in Florida, the CCP is a region-wide process; therefore, these issues affect BellSouth's business procedures in Louisiana and Georgia as well. Thus, the Commission should ensure that these exceptions are resolved before granting BellSouth Section 271 authority in any state in its region.

BellSouth's Anti-Competitive "WinBack" Program

A traditional, or competitive, "win back" program is a viable tool used to entice lost customers back to the initial carrier. Once a customer switches to a new carrier it is only fair to assume that competitors will try to win the customer back. This legitimate win-back occurs only *after* the customer has been converted successfully to the new company. Problems arise, however, where the "win back" is really an interference with business relationships between the "new" customer and the CLEC. Where, as with

¹² See Comments filed by Cbeyond in CC Docket No. 01-277 at 18 ("BellSouth has failed to provide a mechanized process or even notify Cbeyond when EEL mechanization will become commercially available.")

¹³ See BellSouth Press Release, November 5, 2001, at <http://bellsouthcorp.com>.

¹⁴ See Ex Parte filed by Covad in CC Docket No. 01-277, October 31, 2001, at 1 (BellSouth does not include xDSL LSRs in the flow-through reports even though the Commission stated in its New York Order at para 330 that section 271 applicants should make a separate and comprehensive evidentiary showing with respect to the provision of xDSL-capable loops).

¹⁵ See Comments of NuVox and Broadslate filed in CC Docket No. 01-277 at 2.

BellSouth, the “old” company (BellSouth) tries to prevent the “new” CLEC customer from converting to the “new” carrier, BellSouth is really interfering with a contractual relationship and should be subject to certain penalties. In addition, the Commission could issue some sort of injunctive relief in order to ensure that the illegal, unethical, and anti-competitive BellSouth “win-back” practices end immediately.

Given that BellSouth engages in such an anti-competitive win-back program, and since there is little evidence that BellSouth has discontinued its unfair practice of stealing customers before the actual conversion takes place, the Commission should deny the application based on this issue alone. Until this practice ceases, however, BellSouth should not be able to continue to capitalize on other forms of “locking up” customers via long distance authority.¹⁶

Conclusion

ALTS has been clear in its previous section 271 filings that enforcement action post section 271 approval is not as effective as the “irreversibly open to competition” standard. The Commission must take stronger enforcement measures in addition to more closely scrutinizing BOC section 271 applications. ALTS encourages the Commission to take the right step in this application and deny it outright. BellSouth should not be rewarded with long distance lines where there continue to be problems with compliance both in Georgia and Louisiana.

Sincerely,

/s/ Kimberly M. Kirby

Jonathan Askin
Kimberly M. Kirby
Teresa K. Gaugler

¹⁶ See Comments of KMC filed in CC Docket No. 01-277 at 16.